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12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**

14 EMECKA WIMBERLEY

Case No:

15
16 Plaintiff,

Complaint for:

17
18 vs.

- 19 1. **Violations of Electronic Funds**
- 20 **Transfer Act;**
- 21 2. **Violations of Consumer Legal**
- 22 **Remedies Act, Cal Civ Code §§ 1750**
- 23 **et seq.**
- 24 3. **California Business & Professions**
- 25 **Code §§ 17200 et seq.; and,**
- 26 4. **Negligence.**

21 CHIME FINANCIAL, INC.

22 Defendant.

DEMAND FOR JURY TRIAL

INTRODUCTION

1. Congress has found that the use of electronic systems to transfer funds provides the potential for substantial benefit to consumers. Due to the unique characteristics of such systems, Congress passed the Electronic Funds Transfer Act, 15 U.S.C. 1693 et seq. (“EFTA”) to provide a basic framework, establishing the rights, liabilities, and responsibilities of participants in electronic funds transfer systems, most particularly, to provide consumers with individual rights.
2. EMECKA WIMBERLEY (“Plaintiff”), by his attorneys, brings this action to challenge the actions of CHIME FINANCIAL, INC. (“Defendant” or “Chime”) to unlawfully, abusively and without authorization transfer funds out of Plaintiff’s consumer checking account, thereby causing Plaintiff damages.
3. Unless otherwise indicated, the use of any Defendant’s name in this Complaint includes all agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers of that defendant named.

JURISDICTION AND VENUE

4. Jurisdiction of this Court arises pursuant to a federal law, the EFTA, and 28 U.S.C. § 1331, 15 U.S.C. § 1693 et. Seq. and 28 U.S.C. § 1367 for supplemental state claims.
5. This action arises out of Defendant’s: (i) violations of the Electronic Fund Transfers Act, 15 U.S.C. § 1693, et seq. (“EFTA”); (ii) violations of California

1 Commercial Code § 11202 et seq; (iii) Negligence; (iv) Consumer Legal Remedies Act,
2 California Civil Code § 1750 et seq, and (v) Business and Professions Code § 17200 et
3 seq.
4

5 6. Because Defendant conducts business within the State of California, personal
6 jurisdiction is established.
7

8 7. Venue is proper pursuant to 28 U.S.C. § 1391 for the following reasons: (i)
9 Plaintiff resides in the County of Los Angeles, State of California which is within this
10 judicial district; (ii) the conduct complained of herein occurred within this judicial
11 district; and, (iii) Defendant conducts business within this judicial district and is located
12 within this judicial district as well.
13
14

15 **PARTIES**

16

17 8. Plaintiff is a natural person who resides in the County of Los Angeles, State of
18 California.
19

20 9. Plaintiff is informed and believes, and thereon alleges, that Defendant is a
21 Delaware corporation conducting business in the State of California.
22

23 10. Defendant is a “person” as defined by Regulation E in 12 C.F.R. 1005.2(j) and
24 used throughout EFTA and a “financial institution” as defined by 15 U.S.C. § 1693a(9).
25

26 11. The term “electronic fund transfer” which means any transfer of funds, other than
27 a transaction originated by check, draft, or similar paper instrument, which is initiated
28 through an electronic terminal, telephonic instrument, or computer or magnetic tape so

1 as to order, instruct, or authorize a financial institution to debit or credit an
2 account. Such term includes, but is not limited to, point-of-sale transfers, and transfers
3 initiated by telephone. *See* 15 U.S.C. § 1692a(7).
4

5
6 **STATEMENT OF FACTS**
7

8 12. Defendant is a financial services company which, in an effort to attract
9 depositors, advertises widely online that it is “Safe, Secure & Trusted by Millions”.
10 Chime advertises further that “we keep your money safe and secure with periodic
11 security tests of our systems”.
12

13 13. In December 2022, relying on these representations, Plaintiff opened a Chime
14 checking account, account number ending in 1513 (the “Account”). The Account was
15 a consumer account, opened for personal, family and household purposes.
16

17 14. In January 2023, Plaintiff began experiencing intermittent difficulties logging
18 into his account. Shortly thereafter, funds were taken from Plaintiff’s Account by
19 multiple unauthorized electronic funds transfers.
20

21 15. The first loss occurred February 12, 2023 when \$319.37 was removed via debit
22 card for the purchase of apparel in the state of Michigan.
23

24 16. Plaintiff had not yet been provided with a debit card by Chime when the
25 Michigan transaction occurred.
26
27
28

1 17. Because Chime had not yet provided Plaintiff with a Debit Card at the time of
2 the Michigan transactions, Plaintiff is informed and believes and, on that basis, alleges
3 that the unauthorized debit transactions were conducted by employees of Chime or
4 facilitated by Chime employees by providing Plaintiff's debit card information to the
5 identity thieves.
6

7
8 18. That same day, February 12, 2023, immediately upon learning of the
9 unauthorized transfer, Plaintiff contacted Defendant by telephone and filed a
10 dispute. During that phone call, Defendant's representative insisted that Chime would
11 close Plaintiff's debit card, replace it with a new one, and refund the amount taken
12 from his account.
13

14
15 19. Each of these statements was false because Chime did not (1) close the debit
16 card; (2) issue Plaintiff a new one; nor (3) credit Plaintiff with the amount taken.
17 Chime's failure to comply with its own representations, resulted in the further
18 unauthorized use of "Plaintiff's Debit Card", a card which Chime never actually
19 provided to Plaintiff.
20

21
22 20. Ten days later, on February 22nd, 2023, the sum of \$196.98 was removed from
23 Plaintiff's account, again by debit card for the purchase of apparel, this time in Hong
24 Kong. Plaintiff still did not have a debit card, nor had he ever done business with any
25 merchant in Hong Kong.
26
27
28

1 21. Over the next four days - February 23, 2023 through February 26, 2023 -
2 unauthorized electronic transfers out of Plaintiff's Account were made to purchase
3 items from merchants worldwide, including Hong Kong and Brazil. In each instance,
4 Plaintiff had not yet been issued a debit card; nor had he ever done business in these
5 locations nor was Plaintiff located in these locations at the times of purchase.
6

7
8 22. By February 26, 2023, the total amount lost by Plaintiff by unauthorized
9 electronic funds transfer was \$ 1,568.95.
10

11 23. On February 26, 2023, Plaintiff called Chime and filed a second dispute. By
12 then, the total amount lost by unauthorized electronic funds transfer was \$ 1,568.95.
13 The dispute was numbered #6402564. In that call, Chime promised Plaintiff that a
14 provisional credit for the entire amount would be posted into his account within ten
15 (10) days. Chime also told Plaintiff that there was nothing more he needed to do.
16

17 24. Once again, each of Chime's representations was false. Chime did nothing
18 within ten (10) days as promised.
19

20
21 25. Thirty-three (33) days later, on March 29, 2023, Chime alerted Plaintiff that the
22 provisional credit had been posted to his Account. This statement was false.
23

24
25 26. Nothing was credited to Plaintiff's Account. Instead, later that day, March 29,
26 2023, Chime texted Plaintiff that, contrary to Plaintiff's allegations:

27 (a), there was no error in any of the debit card transactions:
28

1 (b) therefore, no funds would be credited to the Account; and.

2 (c) Plaintiff's claim is closed.

3
4 27. A week later, on April 5, 2023, another \$58.17 was stolen from the Account via
5 unauthorized electronic funds transfer. The same amount was taken again the next
6 day, April 6, 2023, also by unauthorized electronic funds transfer. Plaintiff
7 immediately contacted Chime to inform them of the additional unauthorized charges.
8

9
10 28. On April 22, 2023, Plaintiff received a message from a Chime representative
11 stating: "I completely understand the inconvenience you are experiencing. We are
12 working to resolve your case as quickly as possible. Based on the nature of your claim,
13 we will complete the investigation no later than Jun 27, 2023. We will notify you by
14 email as soon as the investigation is completed."
15

16
17 29. Three days later, on April 25, 2023, Plaintiff received a favorable email from
18 Chime member services, stating: "This letter is to inform you that we have made a
19 final determination regarding the claim referenced above. Based on our investigation,
20 we have concluded an error occurred. As we explained in our letter sent to you on
21 2023-03- 24, a provisional credit in the amount of \$1,568.95 was posted to your
22 account. This provisional credit is now permanent and any applicable fee(s) have been
23 reversed."
24
25
26
27
28

30. Once again each of Chime's representations were false. No funds were credited. Instead, a few days later, Plaintiff received another Chime letter denying his claim. Defendant subsequently closed Plaintiff's account.

31. Plaintiff's total loss via unauthorized electronic funds transfer was in the thousands of dollars. Said funds have not been replaced by Defendant nor otherwise recovered by Plaintiff.

CAUSES OF ACTION

COUNT I

VIOLATION OF THE ELECTRONIC FUNDS TRANSFER ACT

15. U.S.C. §§ 1693, ET SEQ.

32. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

33. The foregoing acts and omissions constitute numerous and multiple violations of the EFTA, including the unauthorized withdrawal of funds out of Plaintiff's account by electronic means.

34. In each instance, Plaintiff timely notified Chime of the unauthorized withdrawals.

35. In each instance, Chime failed to reimburse Plaintiff for the funds stolen from Plaintiff's account by unauthorized electronic funds transfer.

36. As a result of each and every violation of EFTA, Plaintiff is entitled to any actual damages pursuant to 15 U.S.C. § 1693m(a)(1); statutory damages pursuant to 15 U.S.C.

§ 1693m(a)(2)(A); and, reasonable attorneys’ fees and costs pursuant to 15 U.S.C. § 1693m(a)(3).

COUNT II
VIOLATIONS OF THE CALIFORNIA CONSUMER LEGAL REMEDIES ACT
CAL. CIV. CODE §§ 1750. ET SEQ

37. Plaintiff re-alleges and incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

38. California Civil Code Section 1750, *et seq.*, entitled the Consumers Legal Remedies Act (hereinafter “CLRA”), provides a list of “unfair or deceptive” practices in a “transaction” relating to the sale of “goods” or “services” to a “consumer.” The Legislature’s intent in promulgating the CLRA is expressed in Civil Code Section 1760, which provides, *inter alia*, that its terms are to be:

Construed liberally and applied to promote its underlying purposes, which are to protect consumers against unfair and deceptive business practices and to provide efficient and economical procedures to secure such protection.

39. Defendant’s Products are “goods” as defined pursuant to Civil Code Section 1761(a).

40. Defendant’s Products are “services” as defined pursuant to Civil Code Section 1761(b).

41. Plaintiff is a “consumer” as defined pursuant to Civil Code Section 1761(d).

42. Plaintiff’s purchase of Defendant’s Products constitutes a “transaction” as defined pursuant to Civil Code Section 1761(e).

1 43. Cal. Civil Code Section 1770(a)(5), (7) and (9) provide that:

2 The following unfair methods of competition and unfair or deceptive acts or
3 practices undertaken by any person in a transaction intended to result or which
4 results in the sale or lease of goods or services to any consumer are unlawful:

5 (5) Representing that goods or services have sponsorship, approval,
6 characteristics,[or] benefits that they do not have....

7 (7) [r]representing that goods or services are of a particular standard, quality, or
8 grade ... if they are of another...

9 (9) Advertising goods or services with intent not to sell them as advertised.

10
11 44. Defendant violated Civil Code Section 1770(a)(5) and (7) by marketing and
12 representing its services as protecting customers from fraud, and by then by delivering
13 services which, in fact, actually leave customers open to having money stolen from
14 accounts with Defendant.

15
16 45. Defendant violated Civil Code Section 1770(a)(9) by advertising and selling
17 services with the knowledge that Defendant's services did not provide the level of
18 security and protection which Defendant had advertised.

19
20 46. On information and belief, Defendant's violations of the CLRA, as set forth
21 herein, were done with awareness of the fact that the conduct alleged was wrongful and
22 was motivated solely by Defendant's self-interest, monetary gain, and increased profit.
23 Plaintiff further alleges that Defendant committed these acts knowing the harm that
24 would result to Plaintiff and Defendant engaged in such unfair and deceptive conduct
25 notwithstanding such knowledge.
26
27
28

1 47. Plaintiff suffered an “injury in fact” because Plaintiff’s money was taken by an
2 unauthorized person on Defendant’s watch.

3
4 48. As a direct and proximate result of Defendant’s violations of the CLRA, Plaintiff
5 is entitled to a declaration that Defendant violated the Consumer Legal Remedies Act.

6
7 49. On November 9, 2023, Plaintiff sent a letter to Defendant via certified mail giving
8 Defendant the opportunity to remedy the failure to reimburse Plaintiff with the funds
9 stolen from his account. As of the filing of this Complaint, Defendant has not complied
10 with Plaintiff’s demand letter pursuant to California Civil Code § 1782. A true and
11 correct copy of this letter is attached as Exhibit “A” and incorporated by reference.
12 Plaintiff has also provided a CLRA venue affidavit as an attachment to this complaint.
13

14
15 50. Plaintiff is also entitled to, and seeks, injunctive relief prohibiting such conduct
16 in the future and to recover money damages.

17
18 **COUNT III**
19 **VIOLATIONS OF THE CALIFORNIA BUS & PROF. CODE**
20 **CAL. CIV. CODE §§ 17200. ET SEQ**

21 51. Plaintiff realleges and incorporates by reference all of the above paragraphs of
22 this Complaint as though fully stated herein.

23 52. Plaintiff and Defendant are each “person(s)” as that term is defined by Cal. Bus.
24 & Prof. C. § 17201. Cal. Bus & Prof. C. § 17204 authorizes a private right of action on
25 both an individual and representative basis.
26
27
28

53. Cal. Bus. & Prof. C. § 17204, a provision of the Unfair Competition Law (B & P C §§ 17200–17209), confers standing to prosecute actions for relief not only on the public officials named therein, but on private individuals, i.e., “any person acting for the interests of itself, its members or the general public.” Thus, a private Plaintiff who has suffered a financial injury may sue to obtain relief for others.

54. “Unfair competition” is defined by Bus. & Prof. Code § 17200 as encompassing several types of business “wrongs,” including: (1) an “unlawful” business act or practice, (2) an “unfair” business act or practice, (3) a “fraudulent” business act or practice, and (4) “unfair, deceptive, untrue or misleading advertising.” The definitions in § 17200 are drafted in the disjunctive, meaning that each of these “wrongs” operates independently from the others.

55. An “injunction” is “the primary form of relief available under the UCL to protect consumers from unfair business practices.” *In re Tobacco II Cases*, 46 Cal.4th 298, 319 (2009); *see also*, *Clayworth v. Pfizer, Inc.*, 49 Cal.4th 758, 789 (2010) (“[i]f a party has standing under” the UCL, “it may seek injunctive relief”).

A. “Unlawful” Prong

56. By knowingly and intentionally transferring Plaintiff’s money without Plaintiff’s authorization, Defendant has engaged in unlawful business practices.

1 57. The practices described herein by Defendant constitute negligence, trespass to
2 chattels, breach of contract, breach of the implied covenant of good faith and fair dealing,
3 and conversion.
4

5 58. Defendant violated Cal. Bus. & Prof. Code §§17200, *et. seq.* through unfair,
6 unlawful, and deceptive business practices, Defendant violated California's Unfair
7 Competition Law, Bus. & Prof. Code §§ 17200 *et seq.*, which provides a cause of action
8 for an "unlawful" business acts or practices perpetrated on consumers.
9

10 59. Defendant had other reasonably available alternatives to further its legitimate
11 business interests, other than the conduct described herein, such as talking directly with
12 Plaintiff before transferring their money.
13

14 60. Plaintiff suffered actual monetary financial injury in that Plaintiff's money was
15 stolen out of his account.
16

17 61. Plaintiff reserves the right to allege further conduct that constitutes other unfair
18 business acts or practices. Such conduct is ongoing and continues to this date.
19

20 62. Plaintiff seeks public injunctive relief to benefit the general public directly by
21 bringing an end to Defendant's unlawful business practices which threaten future injury
22 to the general public.
23

24 **B. "Unfair" Prong**
25

26 63. Defendant's actions and representations constitute an "unfair" business act or
27 practice under § 17200 in that Defendant's conduct is substantially injurious to
28

1 consumers, offends public policy, and is immoral, unethical, oppressive, and
2 unscrupulous as the gravity of the conduct outweighs any alleged benefits attributable
3 to such conduct.
4

5 64. Without limitation, the business practices describe herein are “unfair” and shock
6 the conscience because they offend established public policy, violate California statutory
7 protections, and are objectively immoral, unethical, oppressive, unscrupulous and/or
8 substantially injurious to consumers in that Defendant’s conduct caused Plaintiff to lose
9 out financially due to the prevention of fraudulent transfers and the failure to maintain
10 security measures.
11

12 65. Defendant could and should have furthered its legitimate business interests by not
13 allowing fraudulent transfers to occur when Plaintiff notified Defendant of the issue.
14

15 66. Plaintiff could not have reasonably avoided the injury he suffered.
16

17 67. Plaintiff reserves the right to allege further conduct that constitutes other unfair
18 business acts or practices. Such conduct is ongoing and continues to this date, and is a
19 source of considerable revenue to Defendant.
20

21 68. Plaintiff seeks an injunction requiring Defendant to immediately return the money
22 to Plaintiff that was taken on Defendant’s watch.
23

24 **COUNT IV**
25 **NEGLIGENCE**
26

27 69. Plaintiff incorporates by reference all of the above paragraphs of
28 this Complaint as though fully stated herein.

1 70. Plaintiff believes and thereon alleges that Defendant owed various duties
2 to Plaintiff pursuant to the EFTA, the Consumer Legal Remedies Act and the Business
3 and Professions Code. Specifically, Defendant owed Plaintiff a duty to protect Plaintiff
4 from the fraudulent withdrawal of funds from Plaintiff's account. Further, Defendant
5 owed a duty to Plaintiff to refund any fraudulent withdrawals of funds if Plaintiff timely
6 notified Defendant of the fraud, which Plaintiff did.

9 71. Defendant breached the duty of care it owed to Plaintiff by allowing a third
10 party or parties to make fraudulent withdrawals from Plaintiff's account and for failing
11 to reimburse Plaintiff once Plaintiff notified Defendant of the fraudulent withdrawals.
12

13 72. Plaintiff asserts that Defendant CHIME is the actual and legal cause of Plaintiff's
14 injuries.
15

16 73. Plaintiff believes and thereon alleges that as a proximate result of
17 Defendant's negligence, Plaintiff has suffered severe emotional distress as well as
18 monetary damages.
19

20 74. Due to the egregious violations alleged herein, each Plaintiff asserts
21 that Defendant breached its duties in an oppressive, malicious, despicable, gross and
22 wantonly negligent manner. As such, said conduct establishes Defendant's conscious
23 disregard for the rights of Plaintiff and entitles Plaintiff to recover punitive damages
24 from Defendant CHIME.
25
26
27
28

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered against Defendant for:

- An award of actual damages pursuant to 15 U.S.C. § 1693m(a)(1);
- An award of statutory damages of no less than \$100 nor greater than \$1000 pursuant to 15 U.S.C. § 1693m(a)(2)(A);
- An award of costs of litigation and reasonable attorney's fees pursuant to 15 U.S.C. § 1693m(a)(3);
- For reasonable attorney's fees and costs of suit pursuant to the EFTA and the CLRA;
- Compensatory damages, punitive damages, reasonable attorney's fees and costs, and all other remedies otherwise provided by law;
- Any and all other relief that this court deems just and proper.

TRIAL BY JURY

Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands a trial by jury.

Date: February 6, 2024

/s/Ryan L. McBride
Ryan L. McBride, Esq.
Attorney for Plaintiff